terstate commerce,[26] the fact seems to have been overlooked that while the Constitution expressly gives Congress the right to regulate interstate commerce,[27] it merely vests federal courts with jurisdiction over admiralty and maritime causes.[28] When the state courts in suits by seamen are compelled to adopt the admiralty rules, there can be no recovery for consequential damages. As a matter of substantive law, the justice of this result seems questionable.

CONSIDERATION IN CONVEYANCES BETWEEN HUSBAND AND WIFE IN FRAUD OF CREDITORS. — The marriage relationship lends itself conveniently as a cloak for the fraudulent concealment of property, which a hard-pressed debtor seeks to place beyond the reach of his creditors. Hence, transfers from husband to wife, whenever creditors are involved, are always subjected to the closest scrutiny by the courts, to assure against fraudulent motive.[1] The mere relationship, however, between grantor and grantee creates no just basis for a presumption of fraud.[2] If consideration proceeds from the wife which would, in the ordinary case, suffice to sustain a conveyance as against creditors, the fact of relationship can have little consequence.[3] But it is to be noted that, in these transactions, what constitutes valuable consideration is often determined by principles peculiar to the marital relation, and in such instances the fact does assume significance.

Thus, marriage, it has been declared, constitutes the highest consideration known to the law.[4] Therefore, an antenuptial settlement executed in consideration of marriage, though its moving purpose be to hinder and delay creditors, is upheld universally, as long as the beneficiary was not cognizant of the fraudulent motive.[5] So, also, is the validity of a postnuptial settlement sustained if made in accordance with a written agreement entered into by the parties before marriage.[6] But if such agreement was oral, and failed therefore to comply with the provisions of the Statute of Frauds, the conveyance may be set aside at the instance of creditors.[7] In England, however, a recital of the pre-

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[26] Cooley *v.* The Board of Wardens of the Port of Philadelphia, 12 How. (U. S.) 299 (1851).

[27] Art. 1, Sec. 8. [28] Art. 3, Sec. 2.

[1] See White *v.* Benjamin, 150 N. Y. 258, 44 N. E. 956 (1896); Baumann *v.* Horn, 199 Mo. App. 555, 204 S. W. 53 (1918); Regal, etc. Co. *v.* Gallagher, 188 S. W. (Mo.) 151 (1916); McKey *v.* Emanuel, 263 Ill. 276, 104 N. E. 1051 (1914).

[2] See WILLISTON, CASES ON BANKRUPTCY, 141, note; Ford *v.* Ott, 182 Iowa, 671, 164 N. W. 629 (1917); Lyon *v.* Wallace, 221 Mass. 351, 108 N. E. 351 (1915).

[3] Crenshaw *v.* Halvorsen, 165 N. W. (Iowa) 360 (1917); Nat'l Exch. Bank *v.* Simpson, 78 W. Va. 309, 88 S. E. 1088 (1916); *In re* Jutte's Estate, 230 Pa. 333, 79 Atl. 569 (1911).

[4] Magniac *v.* Thompson, 32 U. S. 348 (1833); Smith *v.* Allen, 5 Allen (Mass.), 454 (1861); Tolman *v.* Ward, 86 Me. 303, 29 Atl. 1081 (1894); American Surety Co. *v.* Conway, 88 N. J. Eq. 370, 102 Atl. 839 (1917).

[5] Barrow *v.* Barrow, 2 Dick. 504 (1774); Clark *v.* McMahon, 170 Mass. 91, 48 N. E. 939 (1898); Robertson *v.* Schlotzhauer, 243 Fed. 324 (1917).

[6] Goring *v.* Nash, 3 Atk. 186 (1744); Metz *v.* Blackburn, 9 Wyo. 481, 65 Pac. 857 (1901).

[7] Warden *v.* Jones, 23 Beav. 487 (1857); Reade *v.* Livingston, 3 Johns. Ch. (N. Y.)

marital contract in the deed proper has been held to satisfy the statute, and in consequence to render the conveyance unimpeachable.[8] From a strictly legal point of view it is difficult to see how the Statute of Frauds can affect the validity of the settlements in any of these cases. In its nature it is purely evidential, and influences in no wise the binding force of the contract.[9] Furthermore, the provision of the statute involved simply forbids an action to be brought "to charge any person upon any agreement made upon consideration of marriage;" [10] clearly, this provision has no relevance to the particular situation, since no suit on any contract is involved. As a practical consideration, however, the line drawn by the American courts is a desirable one, for otherwise the opportunity for resurrecting fictitious oral agreements, and for imposition generally, would be unlimited. Postnuptial settlements, when not executed in conformance with prior agreements of marriage, are governed by principles applicable to all other forms of conveyances.[11] It is interesting to note, however, that the English courts in their tenderness toward family settlements have often disregarded the rules of consideration and have in effect upheld substantially voluntary transfers in this class of cases.[12]

With conveyances between husband and wife other than settlements, the marriage status also affects the question of consideration, though in the main general rules apply. At the common law, the surrender of a wife's separate earnings to her husband did not constitute value sufficient to support a conveyance to her,[13] since the husband received nothing to which he was not already legally entitled. But to-day wherever the wife may separately own her property, a surrender of her earnings would, if not intended as a gift, base a later transfer by her husband on good consideration.[14] Services of a wife to her husband, however, do not render valid a conveyance, since they are duties incident to the marriage relation.[15] A release of an inchoate right of dower,[16] or a release of a wife's homestead rights,[17] is obviously valuable consideration, both rights properly forming part of the wife's separate estate. A recent case raises the question whether a conveyance made in pursuance of a separation agreement and in consideration of the right

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481 (1877); Barnes *v.* Black, 193 Pa. St. 447, 44 Atl. 550 (1899); Gagnon *v.* Baden, etc. Spring Co., 56 Ind. App. 407, 105 N. E. 512 (1914). Before the Statute of Frauds, it seems clear that a postnuptial settlement founded on an antenuptial oral agreement was valid as against creditors. See 1 Vent. 194.

[8] *In re* Holland, [1902] 2 Ch. 360.

[9] See Maddison *v.* Alderson, 8 A. C. 467 (1883).

[10] 29 Car. 2, c. 3, § 4.

[11] See MOORE, FRAUD. CONVEYANCES, 327, note 53.

[12] See *In re* Tetley, 66 L. J. 111 (1898); *Ex parte* Mercer, 17 Q. B. D. 290 (1886).

[13] Cramer *v.* Reford, 17 N. J. Eq. 367 (1898); Union Trust Co. *v.* Fischer, 25 Fed. 178 (1884).

[14] Draper *v.* Buggee, 133 Mass. 258 (1882); Hedge *v.* Glenny, 75 Iowa, 513, 39 N. W. 818 (1888). See also WAIT, FRAUD. CONVEYANCES, 3 ed., § 304.

[15] Michigan Trust Co. *v.* Chapin, 106 Mich. 384, 64 N. W. 334 (1895); Farmer's Nat'l Bank *v.* Thomson, 74 Vt. 442, 52 Atl. 961 (1902); Henze *v.* Rogatzky, 199 Mich. 558, 165 N. W. 629 (1917).

[16] Burwell *v.* Lumsden, 24 Grat. (Va.) 443 (1874); Hagerman *v.* Buchanan, 45 N. J. Eq. 292, 17 Atl. 946 (1887); Deal *v.* Ford, 204 S. W. (Mo.) 181 (1918).

[17] Sullivan *v.* Parkinson, 128 Mich. 527, 87 N. W. 639 (1901).

to future support is voluntary.[18] It was formerly held in England,[19] and the doctrine still persists in some of our American states,[20] that an agreement of separation is void as against public policy. In conformity with that rule a transfer of property to the wife could be attacked by creditors.[21] The prevalent view to-day, however, holds such a contract valid, and consequently a conveyance in satisfaction of the wife's right to support must be upheld.[22] But if cohabitation is resumed after a short period of separation, it has been held that the conveyance in turn becomes voluntary. The limitation imposed seems justified, since a failure of consideration has occurred which entitles the husband to a return of the property transferred. The agreement to relinquish a divorce suit where such agreement has also been held illegal would of course fail to support a conveyance.[23] But generally, as with separation agreements, they have been held legally binding;[24] a discontinuance of divorce proceedings should therefore constitute valuable consideration.

A more troublesome question relative to conveyances from husband to wife, and one with reference to which there is much diversity of decision, concerns payments on premiums by an insolvent on a policy running to his wife. Clearly, the payments as against creditors cannot be upheld on any principles of consideration, since the wife relinquishes nothing of value in return for the benefit conferred. Hence, it would seem that the cases permitting the beneficiary to retain the full face value of the policy[25] cannot be sustained, regardless of the portion of the estate diverted to the payment of the premiums. No more correct is the doctrine which permits a retention of the full proceeds diminished by the amount of the premiums,[26] for the wife thereby receives the benefit of an investment made with money properly belonging to creditors. The strict rule which requires the full proceeds to be turned over to the creditors seems the correct one.[27] Statutes, however, in the majority of jurisdictions permit the husband to set aside a definite sum each year in payment upon his life insurance.[28] These enactments do not affect the question of consideration, but are to be regarded solely as exemption statutes.

The Commissioners on Uniform State Laws have recently drafted an act designed to make uniform in the United States the law of fraudulent conveyances.[29] By its terms, generally, a conveyance made by an

[18] Baldwin *v.* Kingston, 44 Am. B. R. 12 (1919). See RECENT CASES, *infra*, p. 316.
[19] Wilkes *v.* Wilkes, 2 Dick. 791 (1774); St. John *v.* St. John, 11 Ves. 526 (1805).
[20] Allen *v.* Allen, 73 Conn. 54, 46 Atl. 242 (1900); Foote *v.* Nickerson, 70 N. H. 496, 48 Atl. 1088 (1901).
[21] Morgan *v.* Potter, 17 Hun (N. Y.), 403 (1874); Friedman *v.* Bierman, 43 Hun (N. Y.), 387 (1887).
[22] Pippin *v.* Tapia, 148 Ala. 353, 42 So. 545 (1906); Farmer's State Bank *v.* Keen, 167 Pac. (Okla.) 207 (1917).
[23] Morgan *v.* Potter, *supra;* Friedman *v.* Bierman, *supra;* Oppenheimer *v.* Collins, 115 Wis. 305, 91 N. W. 680 (1902).
[24] Adams *v.* Adams, 91 N. Y. 381 (1883). See also Merrill *v.* Peaslee, 146 Mass. 460, 16 N. E. 271, dissenting opinion.
[25] Central Bank *v.* Hume, 128 U. S. 195 (1888).
[26] Etna Nat. Bank *v.* U. S. Life Ins. Co., 24 Fed. 770 (1885).
[27] Merchants' & Miners' Trans. Co. *v.* Borland, 53 N. J. Eq. 282, 31 Atl. 272 (1895).
[28] See 26 HARV. L. REV. 362, note 2.
[29] Commissioners on Uniform State Laws: Proceedings 28 Ann. Conf. 1918, p. 348.

insolvent is fraudulent when fair consideration has not been given in exchange.[30] Fair consideration is defined in accordance with the common-law conception of the term.[31] An enactment, therefore, of the proposed statute will leave unaffected the law of the various states particularly concerned with the transactions between husband and wife. The question, however, seems more closely allied to the law of persons than it does to the law of fraudulent conveyances.

PRESUMPTION OF LEGITIMACY OF A CHILD BORN IN WEDLOCK. — Familiar to all lawyers, and to most laymen, is the age-old presumption that a child born of a married woman is the child of her husband.[1] As it first appeared in the common law, it was conclusive and no evidence was admissible in rebuttal.[2] This was in accord with the strict notions of the common lawyers, and was probably based upon regard for property rights, a bastard being incapable of inheriting or of having any heirs except those of his own body.[3] But with the advance of civilization and the recognition of rights of personalty, the presumption was relaxed and could be rebutted by evidence that the husband was impotent or was beyond the four seas of England at the time of conception.[4] The further development of ideas of individualism brought about the evolution of the modern rule permitting the presumption to be rebutted by any evidence appropriate to the issue.[5] To such rule there exists only one exception, that neither the husband nor the wife may testify directly as to the question of access.[6]

But the law has not gone to the full extent of regarding the presumption as based merely on logical inference. Almost universally it requires of the rebutting evidence a strength or clearness greater in degree than

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[30] Section 4, *supra*.

[31] Section 3, *supra*.

[1] For historical discussions, see preface, LE MARCHANT, The Gardner Peerage Case (1825); NICOLAS, ADULTERINE BASTARDY (1836), containing all the known cases on adulterine bastardy up to that date; Jospeh Cullen Ayer, Jr., "Legitimacy and Marriage," 16 HARV. L. REV. 22–42. Mr. Ayer advances the view that in its origin the notion of legitimacy was based upon domestic religion, and rejects the traditional explanation that marriage was a convenient and certain evidential fact indicating the heir.

[2] Y. B. 32–33 EDW. I. 60 (1304); see THAYER, CASES, EVIDENCE, 2 ed., 45.

[3] See 1 BL. COMM. 458, 459; 2 TIFFANY, REAL PROPERTY, 990, 991.

[4] ROLLE'S ABR. 358, tit. Bastards, letter B (1668); Co. LITT. 244 a. The last case seems to be Regina *v.* Murray, 1 Salk. 122 (1704). The Canon law looked only at actual paternity. See NICOLAS, ADULTERINE BASTARDY, 2.

[5] St. Andrews *v.* McBrides, 1 Str. 51 (1717); Pendrell *v.* Pendrell, 2 Str. 925 (1733); Shelley *v.* ——, 13 Ves. 56, 58 (1806). "The physical fact of impotency, or of non-access, or of non-generating access, as the case may be, may always be lawfully proved by means of such legal evidence as is strictly admissible in every other case in which it is necessary, by the law of England, that a physical fact be proved." Banbury Peerage Case, 1 Sim. & Stu. 153, 155 (1811). See also cases cited *infra*, notes 13–17 inclusive.

[6] This exception is "founded on justice, decency, and morality." Lord Mansfield in Goodright *v.* Moss, Cowp. 591, 594 (1777). See also Scanlon *v.* Walshe, 81 Md. 118, 31 Atl. 498 (1895); People *v.* Case, 171 Mich. 282, 137 N. W. 55 (1912). For a criticism of Lord Mansfield's view, see Legge *v.* Edmonds, 34 L. J. Ch. 125, 135 (1856). The exception is not made in cases of antenuptial conception. Poulette Peerage Case, [1903] A. C. 395. *Contra*, Gates *v.* Marcia, 20 N. M. 158, 148 Pac. 493 (1915).